**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

**D. B. CRIMINAL JAIL APPEAL NO.256/2002
(Mahendra Meena Vs. State of Rajasthan)**

**D. B. CRIMINAL JAIL APPEAL NO.360/2002
(Vijendra Singh @ Vijiya Vs. State of Rajasthan)**

Date of Judgment: 5th July, 2007.

**Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice R. S. Chauhan**

**Mr. Sanjay Gangwal for
Mr. A.M. Khan for the appellant Vijendra Singh @ Vijya.
Mr. Tara Chand for
Mr. S.S. Hora for the appellant Mahendra Meena
Mr. M.L. Goyal, PP for the State.**

(Per R.S. Chauhan J.):

REPORTABLE

Both these appeals arise out of judgment dated 22.1.02 passed by the Addl. Sessions Judge (Fast Track) Baran whereby he has convicted both the appellants under Section 302/34 of Indian Penal Code ('IPC', for short) and has sentenced them to imprisonment for life and has imposed a find of Rs. 2,000/- and to further undergo 3 months of rigorous imprisonment in default thereof. Since both the appeals arise out of the same judgment, they are

being decided by this common judgment.

According to the prosecution on 1.10.2000 Chhagan Lal (P.W.1) lodged a written report (Ex. P.1) at Police Station Bhanwargarh, District Baran wherein he claimed that “as usual his uncle's son, Mool Chand, took out his goats for grazing. On that day around three O' Clock in the afternoon Vijendra Singh S/o Bhanwar Lal Gurjar and Mahendra S/o Mohan Lal Meena went to the place where Mool Chand was grazing his goats. Mahendra was carrying 'Khutiya' (a sharp-edged weapon) and Vijendra was carrying a 'Gandasi' (an axe like sharp-edged weapon). When they went near Mool Chand, both of them caught hold of one of the goats to which his brother Mool Chand protested. Upon his protest, Vijendra Gurjar and Mahendra Meena assaulted his brother. Consequently, his brother died. Devi Singh S/o Ram Karan and Hemraj S/o Pratap have witnessed this incident. My brother's body has been brought back to the village where it is lying right now.” On the basis of this report a formal FIR (Ex.P.2) FIR

No. 109/2000, was chalked out for offences under Section 302/34 of IPC and the investigation commenced. After the investigation, a charge-sheet was filed against both the appellants for offences under Section 302/34 of IPC. The appellants denied the charges and claimed trial. In order to prove its case the prosecution examined sixteen witnesses and submitted a number of documents. The appellants neither examined any witness, nor submitted any document in their defence. After going through the oral and documentary evidence, the learned trial court convicted and sentenced the appellants as afore-mentioned. Hence these appeals before us.

Mr. Sanjay Gangwal, the learned counsel for appellant Vijendra Singh, has vehemently argued that the star witnesses of the prosecution are Devi Singh (P.W. 5) and Hemraj (P.W.6). However, both of them happen to be chance witnesses. For, although they claim to be working near the place of the incident, neither in the site plan, nor through any oral evidence has it been proved that the place

where they were tilling the field is near about the scene of the crime. Therefore, their presence at the scene of the crime is unnatural. Moreover, Hemraj happens to be a distant grandson of the deceased. Thus, he is an interested witness. Hence, his testimony cannot be accepted. Lastly, he has pleaded that the incident has suddenly occurred without any pre-meditation, in the heat of passion. Thus, there is no intention to kill. Hence, the offence falls under Section 304 Part I of IPC and not under Section 302 IPC.

On the other hand, Mr. M.L. Goyal, the learned Public Prosecutor, has supported the impugned judgment. According to him, both the eye-witnesses are trustworthy. Therefore, there is ample evidence for upholding the conviction.

We have heard both the learned counsels, have examined the record and have perused the impugned judgment.

Although it is true that the site-plan (Ex.P.4)

does not show the land tilled by Devi Singh (P.W.5) and Hemraj (P.W.6), but Devi Singh (P.W.5) claims in his testimony that the place of occurrence was only 100 yards away from the land he was tilling. Similar is the statement of Hemraj (P.W.6). Therefore, their presence near the scene of the crime cannot be doubted. Their presence appears to be natural.

Although Hemraj (P.W.6) is the distant grandson of the deceased but his testimony cannot be thrown out on the ground that he is an interested witness. While dealing with the evidence of an interested witness the court is alerted to examine his testimony more closely and to see if the evidence is corroborated by other evidence. According to Devi Singh and Hemraj the incident occurred because the appellant had caught hold of one of the goats of the deceased. The deceased protested, whereupon both the appellants assaulted the deceased. Thus, it is clear that the incident occurred suddenly, without any meditation, at the spur of the moment. Hence, it was not a cold-blooded

murder which was secretly planned and swiftly executed. Hence, the case does not fall within the four corners of Section 302 IPC. Infact, the case falls under Section 304 Part I read with Section 34 of the IPC.

For the reasons aforementioned, we partly allow the appeals and instead of Section 302 we convict the appellants Mahendra Meena and Vijendra @ Vijya under section 304 part I read with section 34 IPC and sentence each of them to suffer rigorous imprisonment for ten years and fine of Rs. 5000/-, in default to further suffer six months rigorous imprisonment.

The impugned judgment of learned trial court stands modified as indicated above.

(R.S. CHAUHAN) J. **(SHIV KUMAR SHARMA) J.**

MRG.